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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,593	05/18/2005	Wim Engelen	11951.0010.PCUS00	4274
45607	7590	09/20/2007	EXAMINER	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE SUITE 200 FALLS CHURCH, VA 22042			CERNOCH, STEVEN MICHAEL	
		ART UNIT		PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/530,593	ENGELEN ET AL.
	Examiner	Art Unit
	Steven M. Cernoch	3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 April 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 April 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>4/7/2005</u>	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation therein is unclear and confusing. It is not understood as the transitional term "characterized in that" is referred to which structural elements for the inclusion of unspecified structural elements. Moreover, it is further not understood as to the phrase "by way of" is being referred to. In other words, it is unclear as to which way is being used.

Regarding claim 2, the recitation therein is also unclear, confusing and misdescriptive. It is unclear as to whether the container body and the trigger sprayer are the respectively part of the structural elements of the container and dispensing mechanism as claimed in claim 1, or these are the additional structural elements of the dispenser.

Regarding claims 4 and 14, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 5, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 13, the antecedent basis for "the dip tube" has not been clearly set forth.

Claims 3, 6-8, 12 and 15 are rejected for incorporating the above errors from their respective parent claims by dependency.

Claims 9-11 and 16-18 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claims 5 and 15. See MPEP § 608.01(n). Accordingly, the claims 9-11 and 16-18 have not been further treated on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 12, and 13 rejected under 35 U.S.C. 102(b) as being unpatentable by Miller et al. (US Pat. No. 5,819,987).

With regards to claim 1, the teaching of Miller et al. discloses the dispenser (column 7, lines 55-56), the container (column 7, line 59), the dispensing mechanism (column 8, lines 20-21), and that the container is connected to the dispensing mechanism by way of a siphon (110, 120, 130 of Fig. 1).

Regarding claim 12, Miller et al. teaches that the dispenser is characterized by a container body (130) having a bottom, walls and an opposite side is connected by the opposite side (130 and 158) to the external chamber (140) of the coaxial siphon (175) and the internal chamber (121) of the coaxial siphon bears a trigger sprayer (110).

Referring now to claim 13, Miller et al. discloses the dispenser characterized in that the dip tube (175) of the trigger sprayer (110) is lodged in the internal chamber (121) of the coaxial siphon (175), extending into the external chamber (140) of the coaxial siphon.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2, 3 and 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Pat. No. 5,819,987) in view of Kohls et al. (US Pat. No. 6,145,756).

Regarding claim 2, Miller et al. discloses a container body (130) having a bottom, and the means for interconnecting said bottom with a side opposite thereto; the container body further including at least one outlet opening arranged in or near the side opposite to the bottom, preferably in or near the upper half of the means for interconnecting the bottom with the side opposite to the bottom (130), a conduct connecting the container body, extending from the outlet opening (119), with the dispensing mechanism (110), a trigger sprayer (114) but Miller et al. does not disclose a neck connecting the trigger sprayer with the conduct, whereby the neck and the conduct are linked to the container body so that the neck and the conduct form a swan-neck or a U-shape extending from said outlet opening so as to exchange air pressure and product to be dispensed. However, Kohls et al. discloses the neck connecting the trigger sprayer with the conduct whereby the neck and the conduct are linked to the container body so that the neck and the conduct form a swan-neck or a U-shape extending from the outlet opening (130 of Fig. 6). Therefore, it would have been obvious at the time of the invention to a person having ordinary skill in the art to modify the apparatus of Miller et al. with the dispenser characterized with the motivation of having a means such that the neck connecting the trigger sprayer with the conduct whereby the neck and the conduct are linked to the container body so that the neck and the conduct form a swan-neck or a U-shape extending from the outlet opening as taught by Kohls et al.

Regarding claim 3, Miller et al. discloses the means for interconnecting the bottom with the side opposite thereto has a cylindrical form (130).

Regarding claim 5, Miller et al. discloses a protrusion (120) is arranged close to the trigger sprayer (110) such as to receive the end of a dip tube (175) attached to the trigger sprayer.

Regarding claim 6, Miller et al. teaches the protrusion (120) extends the conduct (119) arranged in such a manner as to receive a dip tube (175) attached to the sprayer (100).

In regards to claim 7, Miller et al. discloses the protrusion (120) but does not disclose extending the neck arranged in such a manner to receive the dip tube attached to the sprayer. However Kohls et al. teaches the neck (162 of Fig. 15) arranged in such a manner to receive the dip tube (172) attached to the sprayer (10). Therefore, it would have been obvious at the time of the invention to a person having ordinary skill in the art to modify the apparatus of Miller et al. and Kohls et al. with the motivation of having the extended neck and dip tube as taught by Kohls et al.

In regards to claim 8, Miller et al. discloses the protrusion (120) arranged in the neck (119) in such a manner to receive the dip tube (175) attached to the sprayer (100).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Pat. No. 5,819,987) in view of Kohls et al. (US Pat. No. 6,145,756) in further view of Richter et al. (US Pat. No. 5,433,347).

With regards to claim 4, neither Miller et al. nor Kohls et al. disclose the means for interconnecting the bottom with the side opposite thereto has a cubical form comprising side walls, preferably at least four side walls interconnecting said bottom with side opposite thereto. However Richter et al. does disclose the cubical form (column 6, lines 61-63). Therefore, it would have been obvious at the time of the invention to a person having ordinary skill in the art to modify the apparatus of Miller et al. and Kohls et al. with the means for interconnecting the bottom with the side opposite thereto with the motivation of having a different shaped container, such as the one in cubical form as taught by Richter et al.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Pat. No. 5,819,987) in view of Libit et al. (US Pat. No. 6,213,358 B1).

Regarding to claim 14, Miller et al. does not disclose the dispenser characterized in that the internal chamber of the coaxial siphon is inclined by 10° to 45°, preferably 15° to 30°. However, Libit et al. discloses such features of the dispenser characterized in that the internal chamber of the coaxial siphon is inclined by 10° to 45°, preferably 15° to 30° (column 4, lines 23-26). Hence, it would have been obvious at the time of the invention to a person having ordinary skill in the art to modify the apparatus of Miller et al. with the motivation of having a dispenser characterized in that the internal chamber of the coaxial siphon is inclined by 10° to 45°, preferably 15° to 30° as taught by Libit et al.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US Pat. No. 5,819,987) in view of Libit et al. (US Pat. No. 6,213,358 B1) and further in view of Ginther et al. (US Pat. No. 5,361,946).

With regards to claim 15, neither Miller et al. nor Libit et al. disclose the dispenser as characterized in that the external chamber of the coaxial siphon is shaped in the form of a handgrip and the container body is shaped such as to ergonomically rest on the user's forearm. However, Ginther et al. does teach such items as the external chamber formed as a hand grip (18 and 20 of Fig. 1) and that the container body is shaped to ergonomically rest on the user's forearm (Paragraph [57], lines 6-9). Therefore, it would have been obvious at the time of the invention to a person having ordinary skill in the art to modify the apparatus of Miller et al. and Libit et al. with the motivation of having a dispenser as characterized in that the external chamber of the coaxial siphon is shaped in the form of a hand grip and the container body is shaped such as to ergonomically rest on the user's forearm as taught by Ginther et al.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Evans et al. (US Pat No 5,381,961) discloses a spray bottle and siphon tube. Rhea et al. (US Pat No 5,195,664) discloses a spray bottle. Vierkotter et al. (US Pat No 4,355,739) discloses a spray bottle. Corba et al. (US Pat No 5,398,846) discloses a spray bottle. Miller et al. (US Pat No 4,830,235) discloses a spray bottle and siphon tube. Good et al. (US Pat No 6,264,073) discloses a spray bottle and

siphon tube. Cox et al. (US Pat No 6,006,768) discloses a spray bottle. Park et al. (US Pat No 5,472,119) discloses a spray bottle. Klima et al. (US Pub No 2003/00338186) discloses a spray bottle. Ilood et al. (US Pub No 2005/0167527) discloses a spray bottle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven M. Cernoch whose telephone number is (571) 270-3540. The examiner can normally be reached on M-T, 730-5, F1 -Off, F2 730-5 (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Cheng can be reached on (571) 272-4433. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


SMC
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